

U.S. Bankruptcy Court
District of N.M.
Brian Van Winkle
#ADV 20-1022

FILED
at 8:31 o'clock A.M.

SEP 30 2021

United States Bankruptcy Court
Albuquerque, New Mexico

ADDENDUM TO RESCISSION AGREEMENT
REQUEST.

PLEASE SEE ATTACH.

Brian Van Winkle
Brian Van Winkle

Addendum to Rescission Agreement Request

To the Honorable Judge Thuma

I write pro se to present an addendum to the objection to the settlement Terms of the mediation agreement before Judge Thuma, dated 7/02/21 (No. 13-11743; Adv. No. 20-022 t; case 20-01022-t) filed at 12:50 pm 9/20/21, to which I was a party. In the alternative I requested a rescission on the grounds of mutual mistake and unconsciounability. Additional information that will assist in supporting my request and assist the court in making a decision is explained and attached.

Missing E-mail chains between myself and Ron Holmes concerning his representation in regard to the Roosevelt property re-appeared and are now being included in this addendum to clarify.

Also , New information showing Mr. Williams has recently Sold the Otero Redemption Property as of 9/13/21, Twice. First to his estate, then to an individual. Mr. Williams does not have clear title to the Otero Property .

My attorney, Ron Holmes' original position concerning the legality of the liens that are in place on the Roosevelt County property by Mr. Williams and his counsel were discussed and agreed upon to be attempts to collect a discharged debt and were aknowledge by Mr. Holmes as a viable avenue to litigate with when I seeked his legal representation as the attached emails explain.

**Also the court will find my termination notice to Mr. Holmes
Reiterating my position concerning the validity of the request and his responses telling me not to pursue because I was confussed about the definition of in Rem V. In Personam.**

**Yesterday, 9/28/21, I went to check on the Otero Property.
There were electricians putting a new power box on my house.
Becco Electric (575-443-1509) informed me that they had an order**

**Addendum to Rescission Agreement Request
to fix the electric box by the New owner of the property,
Mr. Joe Skaggs, (575-491-6693) owner operator of Hydrotech Well drilling
From Las Cruces, N.M.**

I called Mr. Skaggs and he confirmed that he made a cash payment to Mr. Williams and had purchased the property. He said he had a signed contract and that he would provide copies if legally requested to do so, but had been told by Mr. Williams there were no encumbrances to the property.

I went to the Otero Clerks office and was given a copy of the Special Warranty deed recorded by Mr. Williams on 9/13/21, that shows the Otero property was sold by Mr. and Mrs. Williams to Mr. and Mrs. Williams' living trust. I am assuming Mr. Williams then sold the property to Mr. Skaggs with a percentage down and carried the rest?

I am requesting the court consider this addendum information when making a decision on my request to rescind the mediation agreement.

Also, There is a BLM Easment that was legally granted to Mark And Cassie Bryant that Mr. Williams has blocked. The Bryants are currently having the title company research Mr. Williams right to close that road.

Thank You



Brian Van Winkle

575-430-4370

brianvw62@gmail.com

702 White Mountain #11

Ruidoso, N.M. 88345

Fwd: Ron Holmes agreement with Brian Van Winkle concerning liens on Roosevelt property.

brian van winkle <brianvw62@gmail.com>

Wed 9/29/2021 1:12 PM

To: Postal Annex <paplus259@hotmail.com>

Sent from my iPhone

Begin forwarded message:

From: brian van winkle <brianvw62@gmail.com>

Date: September 29, 2021 at 1:11:03 PM MDT

To: Brian Van Winkle <brianvw62@gmail.com>

Subject: Ron Holmes agreement with Brian Van Winkle concerning liens on Roosevelt property.

Brian,

Thank you meeting with me yesterday and discussing your case. As we discussed during our consultation, please see the attached engagement letter for your review and signature. You are welcome to use our secure payment portal to make payments to your account. Here is the link:

<https://www.davismiles.com/make-payment/> Please include your matter id number: 59253-001

I did get a chance to read through the paperwork you provided and was able to briefly review the docket in the Adversary case. I also reviewed the liens filed in Roosevelt County on February 5, 2021 and it does appear the lien attempts to collect on a discharged debt. This issue needs to be raised before the Court and I am happy to let the Court know this on Monday, however, it is my opinion we need to formally demand they immediately release the lien and give them a chance to remedy the error before taking any further action. Also of note, New Mexico has a statute we might find very helpful in addition to sicking Judge Thuma on them again. The Lien Efficiency Protection Act NMSA 48-1A-1 et. seq provides for a robust remedy for illegal liens, including a statutory minimum damages of \$5,000.00 plus attorney's fees and costs. This is the angle I am thinking we go down, especially since Judge Thuma only sanctioned them \$5,000.00 for the first offense. He might hit them harder this time around so we might do both.

These are my thoughts so far. Still developing.

Please let me know if you have any questions or concerns.

Thank you again and I am looking forward to working with you.

Sincerely,

Ron Holmes

Partner

rholmes@davismiles.com

Sent from my iPhone

Fwd: Termination of representation (59253-001)

Brian Van Winkle <brianvw62@icloud.com>

Wed 9/29/2021 1:28 PM

To: Postal Annex <paplus259@hotmail.com>

Sent from my iPhone

Begin forwarded message:

From: Brian Van Winkle <brianvw62@icloud.com>

Date: September 20, 2021 at 8:28:54 AM MDT

To: Postal Annex <paplus@hotmail.com>

Subject: Fwd: Termination of representation (59253-001)

Sent from my iPhone

Begin forwarded message:

From: Brian Van Winkle <brianvw62@icloud.com>

Date: September 19, 2021 at 6:17:42 PM MDT

To: Dayton Calvin <dayton.calvin@alumni.pearperdine.edu>

Subject: Fwd: Termination of representation (59253-001)

Sent from my iPhone

Begin forwarded message:

From: Ron Holmes <rholmes@davismiles.com>

Date: September 16, 2021 at 9:31:04 AM MDT

To: Brian Van Winkle <brianvw62@icloud.com>

Subject: RE: Termination of representation (59253-001)

I have already filed the motion to withdraw so I am not going to respond on your behalf.

I again urge you to consider the bigger picture here. Under the agreement, you have full,

unencumbered rights to the Lincoln and Roosevelt county properties and will receive a check from them once this clears. Even if you convince Judge Thuma to revisit the Otero county redemption, the best you could get in my opinion is the money returned – which you are already getting a good portion of those funds back. If you set this aside you don't just set the Otero issue aside. Everything is set aside and then they are free to foreclose on the Lincoln and Roosevelt properties because they have a valid lien on those properties. This something we discussed at length.

Ron

Ron Holmes

Partner

rholmes@davismiles.com

 **Davis Miles**
McGuire Gardner

320 Gold Ave. SW
Ste. 1111
Albuquerque, NM 87102
Tel: (505) 268-3999
Fax: (505) 243-6448

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Please consider the environment before printing this email.

From: Brian Van Winkle [<mailto:brianvw62@icloud.com>]

Sent: Wednesday, September 15, 2021 11:18 PM

To: Ron Holmes <rholmes@davismiles.com>

Subject: Re: Termination of representation

**** External Sender **** Cyber Security Reminder: Send suspicious messages to phishing@davismiles.com.

Ron,

I will again refer you to Judge Thumas' conclusion in his last opinion , and , again ask you and your firm to re-read his entire opinion and ...offer you the position to respond on my behalf for a request to rescind the agreement made with Mr. fish. It is obvious to me that after Judge Thuma gives a response, he will give his judgement on the legality of my question about this being an in personam pursuit for payment of a discharge debt by the BC vrs an in Rem by the district (think about that) the Federal position under Thuma vrs District court position under Counts is very different. you have read Katy Wray's Appeal position? You have read my concerns? I am in the correct position and have spent 13yrs getting here. I have been and stayed on top of this case . You might say I've taken it personally and will until it's conclusion. Iam preparing a Pro-Se statement with The help of a Harvard law professor as of today, I will send you a copy of the filing once it's with Judge Thuma .

Thank you .

Brian VW

Sent from my iPhone

On Sep 15, 2021, at 5:25 PM, Ron Holmes <rholmes@davismiles.com> wrote:

Brian,

I think you are making a huge mistake here but it is your choice and I have attempted to talk you out of taking this position multiple times. You are failing to appreciate what you gained from the mediation. You have the Roosevelt and Lincoln properties no longer subject to any liens. You are still confusing in person with in rem remedies. Lastly and maybe most importantly, I fear you are going to be held in contempt by Judge Thuma for attempting to set this aside and he will no longer be on your side.

I must inform you of the pending deadline to object to the jointly filed Motion to Approve the Settlement. You must file an objection (to your own agreement) by September 23, 2021 or the Court will enter an order approving the settlement.

I must file a motion with the court to withdrawal. And this will go out tomorrow. You will get a copy in the mail. Because you consent to the withdrawal the Court may enter an order without and further notice.

Ron

Ron Holmes

Partner

rholmes@davismiles.com

 **Davis Miles**
McGuire Gardner

320 Gold Ave. SW
Ste. 1111
Albuquerque, NM 87102
Tel: (505) 268-3999
Fax: (505) 243-6448

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Please consider the environment before printing this email.

-----Original Message-----

From: Brian Van Winkle [<mailto:brianvw62@icloud.com>]

Sent: Wednesday, September 15, 2021 1:17 PM

To: Ron Holmes <rholmes@davismiles.com>

Subject: Termination of representation

**** External Sender **** Cyber Security Reminder: Send suspicious messages to phishing@davismiles.com.

Ron Holmes,

I'am terminating your representation and seeking representation elsewhere. My

understanding of the conclusion in the opinion that was given to the estate by Judge Thuma on March 5, 2021 gives me the understanding that he told both us and Williams He was considering granting Summary Judgement on liability in the plaintiffs favor unless he could show just cause not to. I believe what Judge Thuma has stated will come to pass and I am willing to take that chance and believe that if Williams does foreclose on my Inherited property, he will be found again in contempt of court and additional sanctions , on top of what we have already been awarded , will be applied. This conclusion in his opinion was not discussed in mediation. The Otero property was unexpectedly taken off the negotiating table. I am not happy with the mediation or the representation I received. My sister and I were told it would be a routine mediation without any unexpected changes. You informed me when asked about how I needed to prepare that it was going to be a straight forward negotiation, that was certainly not the case.

Judge Thumas opinion 13-11743t7 , once ruled on and in consideration with the legality of them removing the redemption funds from the redemption process before it was settled would cause the Williams to be in an in personam pursuit to collect a discharged debt (the property has be in me and my sisters name since Clark Cole released it several years ago)if they moved to foreclose on the subject property.

Thank you,
Brian VW.

Thank Sent from my iPhone

Fwd: Email cha

brian van winkle <brianvw62@gmail.com>

Wed 9/29/2021 10:09 AM

To: Postal Annex <paplus259@hotmail.com>

Sent from my iPhone

Begin forwarded message:

From: Brian Van Winkle <brianvw62@icloud.com>

Date: September 29, 2021 at 10:06:54 AM MDT

To: brianvw62@gmail.com

Subject: Email cha

Ron Holmes

Partner

rholmes@davismiles.com

 **Davis Miles**
McGuire Gardner

320 Gold Ave. SW
Ste. 1111

Albuquerque, NM
87102

Tel: (505) 268-3999

Fax: (505) 243-6448

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From: Tammy Sprague [<mailto:gtssprague@comcast.net>]

Sent: Monday, August 16, 2021 9:57 PM

To: Ron Holmes <rholmes@davismiles.com>

Cc: 'brian van winkle' <brianvw62@gmail.com>; hvanwinkle505@comcast.net

Subject: FW: Sprague v. Bellevue Valley Land, et.al. -- Money Judgment

Sensitivity: Confidential

** External Sender ** Cyber Security Reminder: Send suspicious messages to phishing@davismiles.com.

Ron,

Below is the email chain of late January detailing the amount of payment that Williams presented and I refused to negotiate. It was presented just days before our hearing in front of Judge Thuma. It does confirm that they presented a check to Kyle, and I have refused to negotiate it until payoffs are clearly defined.

Please let me know what else you need. Thank you, Tammy

From: Kyle Moberly <kyle@mobelaw.com>
Sent: Tuesday, January 26, 2021 3:26 PM
To: Tammy Sprague <gtsprague@comcast.net>
Subject: FW: Sprague v. Belleview Valley Land, et.al. -- Money Judgment
Sensitivity: Confidential

Tammy,

Please read the following emails from Tom Martin and Joel Gaffney regarding the Williams' paying the money judgment to you. I will let you know when I receive the check.

Sincerely,

Kyle H. Moberly
Law Office of Kyle H. Moberly, P.C.
3948 E. Lohman Avenue, Suite 3
Las Cruces, New Mexico 88011
(575) 541-1278

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From: Joel Gaffney <joel@gaffneylaw.com>
Sent: Tuesday, January 26, 2021 3:21 PM
To: W. T. Martin <martinlaw@zianet.com>
Cc: Kyle Moberly <kyle@mobelaw.com>; Carla Galloway <cgalloway@lawmdm.com>
Subject: Re: Sprague v. Belleview Valley Land, et.al. -- Money Judgment

Kyle Moberly filed the transcripts of judgment, so any release of them should be handled through his office. Thank you for copying me on the message, though.

Joel Alan Gaffney, Esq.
Gaffney Law, PC
P.O. Box 3460
Albuquerque, NM 87190
M: (505) 226-1748

F: (505)213-0629

Sent from my iPhone

On Jan 26, 2021, at 15:07, W. T. Martin <martinlaw@zianet.com> wrote:

Gentlemen:


My clients are going to pay the money judgment entered by Judge Thuma. I am not sure which attorney should be sent the check and which attorney will see to it the ***Transcript of Judgment*** that has been recorded in several counties is released. Please advise.

Tom Martin

--

W. T. Martin, Jr.
Martin, Dugan & Martin
509 W. Pierce St.
P.O. Box 2168
Carlsbad, NM 88221-2168
[\(575\) 887-3528](tel:(575)887-3528)
Fax [\(575\) 887-2136](tel:(575)887-2136)
e-mail: martinlaw@zianet.com

Sent from my iPhone



SPECIAL WARRANTY DEED

John H. Williams and Ellen B. Williams, his wife, for consideration paid, grant to John H. Williams, Trustee of the John H. Williams and Ellen B. Williams Living Trust, which has an address of 10217 East Hwy 00, Hallsville, Missouri 65255 the following described real property situate and lying in Otero County, New Mexico:

A tract of land in the Northeast Quarter (NE ¼) of Section 24, T15S, R9E, NMPM, Otero County, New Mexico, described metes and bounds as follows:

Beginning at the East One-Quarter corner (E ¼) of Section 24 and going S 89°51'38" W along the East/West centerline of said Section 24, a distance of 1525.75 feet; Thence N 00°37'16" W, a distance of 858.92 feet; Thence S 89°50'08" E, a distance of 1531.80 feet; Thence S 00°13'11" E, a distance of 850.76 feet to the said place of beginning.

and

LOT 5, RANCH'S OF RIATA, OTERO COUNTY, NEW MEXICO, as shown on plat Book 65, Page 21, records of Otero County, New Mexico.

And



ANY ADDITIONAL LAND WITHIN THE RANCH'S OF RIATA LESS LOTS 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

Included in this conveyance is that certain Well and all water rights appurtenant thereof which is located on the above-described property.

Together with any and all easements of record or that are open and notorious, which includes a private road easement on the east side of Lots 1, 2, 3, 4 and 5 that is three (3) acres, more or less.

with special warranty covenants.

WITNESS the Grantor's hand and seal this 13th day of September 2021.


John H. Williams

Ellen B. Williams, by
John H. Williams attorney-in-fact
for Ellen B. Williams

ACKNOWLEDGMENT

STATE OF NEW MEXICO :
: ss
COUNTY OF EDDY :

The foregoing instrument was acknowledged before me this 13th day of September 2021 by
John H. Williams, individually, and as attorney-in-fact for Ellen B. Williams.


Notary Public

My commission expires: 4-6-25

 OFFICIAL SEAL
ASPEN J. GABALDON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 4-6-25

